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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,715	08/07/2002	Gunther Spatz	2169.GLE.PT	2858

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MORRISS O'BRYANT COMPAGNI, P.C.  
136 SOUTH MAIN STREET  
SUITE 700  
SALT LAKE CITY, UT 84101

EXAMINER

HARMON, CHRISTOPHER R

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/070,715

Applicant(s)

SPATZ ET AL.

Examiner

Christopher R Harmon

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10,12-16 and 18-29 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 10,12-16 and 18-29 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/14/05.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/10/04 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 10, 12-16, 18-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Petho et al. (US 4,987,726).

Petho et al. disclose a method and device for filling and sealing containers in a clean environment with clean room 3 with filling station 8; closing or stoppering station 9; final closing station (not shown downstream tunnel 14); see figure 7 and column 13, lines 40-45 –“moved out through the tunnel 14 for wrapping or encapsulation of the stoppers”.

Prior to entering the clean room 3 the containers are cleaned in cleaning lock 17 before entering tunnel 14; see figures 1 and 2. Second cleaning lock is provided (inside clean room) for sterile stoppers; see column 4, lines 27-33 and column 7, lines 47-60. The sterilization method disclosed uses an inert gasification device (nitrogen). Petho et al. disclose "The system, which is sealed from the exterior, is provided with known sealing lock arrangements for the sterile introduction of empty bottles," etc. (see abstract, last sentence).

Regarding claims 15-16, Petho et al. disclose "Both the supply tunnel and the discharge or outfeed means are provided with a known sealing lock arrangement (not shown) for maintaining sterility and a suitable pressure... in the tunnel 14." (column 4, lines 6-9). Therefore, the filled and sealed bottles when returned to tunnel 14 are further washed/cleansed (exterior) with a positive pressure before final discharge.

The cleaning lock of Petho et al. contains a steam distributor (considered both a liquid and germicidal gas).

The stoppers/sealing devices are sterilized either before entering or in the magazine by "steam, washing liquid, etc." (column 4, lines 52-56).

### ***Response to Arguments***

4. Applicant's arguments filed 12/10/04 have been fully considered but they are not persuasive.

The new limitations do not distinguish applicant's claims over Petho. The final closing station is provided outside the filling and/or closing stations, see above. Separate sealing locks provide for separate subsections within "clean room 3"; see

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figure 2. Furthermore, differentiation of where a final closing takes place, ie. in or out of a sterile environment, is not determined to be patentably distinguishable, in fact one would think that wrapping a food/beverage product in a clean/sterile environment would be preferable to one that was infected/unclean.

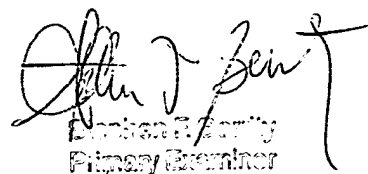
The exterior of the bottles in Petho are considered "washed" by applying sterile air within tunnel 14.

### **Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Thursday from 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Christopher R. Harmon  
Primary Examiner

